

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LEONILA PEREZ
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-379
Case No. 77-6122

S.S.A. No.

W. M. BOLTHOUSE FARMS
(Employer)

Office of Appeals No. NH-9977

The claimant appealed from that portion of the decision of an administrative law judge which held the claimant was disqualified from benefits for ten weeks under the false representation provisions of the California Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant has been a seasonal worker in the Bakersfield area for approximately four seasons, last working in July 1976. She thereafter established a benefit year effective August 1, 1976, and remained in a continuing claim status through February 1977.

In February 1977 an untimely protest from the claimant's last employer disclosed that the claimant had been notified to return to work on November 22, 1976, and had failed to do so.

The notification of work was directed to the claimant by telephone and was received by the claimant's daughter who acted as interpreter for the claimant and who also worked for the same employer. A work opportunity was extended to both the claimant and the daughter.

The daughter was in the process of moving to a new residence and declined the work. The claimant was not immediately notified of the offer of work due to an oversight.

The claimant herself does not understand English and speaks no English. She has a limited education and can read the Spanish language with difficulty. Certifications for benefits were prepared by the daughter and in certifying for the week in question did not disclose the offer of work. The determination which resulted from the Department's investigation was based upon other facts which were covered in the proceedings below and are not presently in issue before this Board. It was specifically found that the claimant had submitted erroneous information to the Department and the disqualification of ten weeks was affirmed.

REASONS FOR DECISION

Section 1257(a) of the California Unemployment Insurance Code provides that a claimant shall be disqualified from benefits if such claimant has wilfully made a misstatement concerning or has wilfully withheld a material fact for the purpose of obtaining benefits.

There need not be a specific intent to deceive the Department. It is the mere fact that erroneous information was submitted to the Department that invokes a disqualification (Diagnostic Data, Inc. v. California Unemployment Insurance Appeals Board (1973), 34 Cal. App. 3d 556, 110 Cal. Rptr. 157). What is crucial is the determination of whether a claimant with knowledge of the facts knowingly withholds pertinent information or misinforms the Department in order to qualify for unemployment insurance compensation.

Upon appeal to this Board counsel urges that the disqualification assessed is appropriate only upon a finding of agency. With such contention we must concur, as will be indicated.

An agency relationship exists where one person acts through the services of another. It is not a matter of law but a matter of fact (section 2295, California Civil Code). An agency relationship need not be in writing. It will result equally from the intent of the parties and is either express or implied (section 2298, California Civil Code). Such relationship may reasonably be inferred where the principal acts in such a way as to cause a third person to believe the agency relationship has been established (section 2300, California Civil Code).

Here the claimant had dealt with the Department since August when the claim was initially established through the daughter and had received her benefits as a result of the daughter's preparation of the claim. Similarly, the employer had customarily contacted the claimant through the daughter who, being bilingual, could receive the information in English and transmit it to the claimant in Spanish. Accordingly, we find an agency relationship was established through the conduct of the parties (Hickson v. Gray (1949), 91 Cal. App. 2d 684, 205 P. 2d 420; and Anderson v. Thatcher (1946), 76 Cal. App. 2d 50, 172 P. 2d 533).

It is axiomatic, however, that a principal is responsible for the acts of the agent, a concept which has been consistently observed by this Board and its predecessors. In Benefit Decision No. 6428 issued in 1956 the claimant's application for benefits was prepared by the claimant's wife. One of the questions involved on the form concerned the receipt of vacation pay which was answered in the negative. In preparing the form it could not be established that the specific questions had been disclosed to the claimant. Without verifying the accuracy of the answers set forth the claimant signed the form and submitted it to the Department. It was pointed out that while the claimant himself pled ignorance that the form contained incorrect statements, the claimant had requested his wife to complete the form on his behalf. He therefore established her as his agent and became responsible for the acts and omissions of the agent and was properly subject to the disqualification assessed.

In Benefit Decision No. 6500 the claimant and her sister-in-law frequently impersonated each other with respect to incoming telephone calls. The sister-in-law received a referral to suitable work from the Department and through inadvertence failed to disclose it to the claimant. Again it was held that having authorized the sister-in-law to act on her behalf the claimant was liable for the failure of such sister-in-law to properly forward the message, again holding the claimant liable for the omissions of the agent.

In a factual situation more closely related to the facts presently presented, a claimant who was unable to read or write the English language requested a friend to prepare a claim form. The form was executed without inquiry of the claimant and erroneous information with respect to the receipt of wages had been set forth.

Without verifying the accuracy of the form the claimant affixed his signature and submitted it to the Department. It was pointed out that the claimant had authorized his friend to answer the questions on the initial claim form thus constituting the friend agent of the claimant. In signing the form the claimant adopted as his own the answers which the agent had placed thereon. It was further pointed out that the claimant had a duty to report the vacation pay when filing the initial claim for benefits and is properly subject to disqualification (Benefit Decision No. 6507).

We believe the rationale expressed in such cases to be valid. It is understandable that many claimants are unable to understand or write the English language. In receiving benefits from the Department, however, it is the responsibility of each claimant to properly report to the Department any factor which bears on eligibility for benefits. It is equally a claimant's responsibility to verify the information which has been set forth. Accordingly, considering the foregoing, we find that the claimant did in fact improperly withhold material facts in certifying for benefits and is properly subject to disqualification as provided by sections 1257(a) and 1260(d) of the code.

Section 1260(d) provides for a minimum period of disqualification of two weeks and not to exceed ten weeks. In assessing the claimant's penalty in this instance it is evident that she must assume the consequences of her daughter's wilful nondisclosures on the weekly certification for benefits, but we cannot find that the claimant personally participated in such acts. Because of the lack of personal participation in the withholding of information it does not appear that the maximum disqualification should be assessed, and we therefore reduce the period of disqualification to five weeks.

DECISION

That portion of the decision under appeal is modified.
The claimant is disqualified for benefits for five weeks
commencing with February 27, 1977.

Sacramento, California, March 7, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

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